REMARKS/ARGUMENTS

Favorable reconsideration of this application as currently amended and in light of the following discussion is respectfully requested.

Claims 17-42 are presently active in this case. The present Amendment cancels Claims 1-16 and adds Claims 17-42.

In the outstanding Office Action, Claims 5-16 were objected to under 37 C.F.R. § 1.75(c) as being in improper form. Claim 1 was rejected under 35 U.S.C. § 112, second paragraph, for insufficient antecedent basis. Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by Chambers et al. (U.S. Patent No. 6,480,473). Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by Hirst et al. (U.S. Patent No. 6,173,411). Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by McDowell (U.S. Patent No. 6,266,785). Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by Robbins et al. (U.S. Patent No. 6,467,049). Claims 1-16 were rejected under 35 U.S.C. § 102(e) as being anticipated by Carlson (U.S. Patent No. 6,697,849).

Initially, Applicants respectfully request that the references cited in the Information Disclosure Statement filed April 27, 2001, be acknowledged as having been considered in the next Office Action.

In response to the objection under 37 C.F.R. § 1.75(c) and the rejection under 35 U.S.C. § 112, second paragraph, the present Amendment cancels Claims 1-16 without prejudice or disclaimer. New Claims 17-42 are drafted to avoid improper multiple dependencies and other matters of improper form. It is believed that Claims 17-42 are in proper form and no further objections and/or rejections on the basis of 37 C.F.R. § 1.75(c) and/or 35 U.S.C. § 112, second paragraph, are anticipated. If, however, the Examiner

disagrees, the Examiner is invited to telephone the undersigned who will be happy to work with the Examiner in a joint effort to derive mutually acceptable language.

New claims 17-42 find non-limiting support in the disclosure as originally filed for example in original Claims 1-16, Figs 1-2, and pages 4-8. Therefore, the new claims are not believed to raise a question of new matter.[1]

In response to the rejection of Claim 1 under 35 U.S.C. § 102(e) based on Chambers et al., Applicants note that Chambers et al. does not teach two interfaces, and, in particular, that Chambers et al. does not teach a network interface and neither does it teach a standby bus interface as recited in new independent Claim 17. The "network" in Chambers et al. describes the linked nodes themselves and not an external network to which the linked nodes, seen as a system, are connected. There is no mention of what the nodes are connected to outside of each other. As a result, the nodes are not routing units, and, in particular, no node is initially responsible for a task and no node is configured to monitor a node and take over its function in the event of failure. Furthermore, the "software routine" alleged in the Office Action to be analogous to the claimed system is not so because the software routine in Chambers et al. (as well as all other routines in Chambers et al.) pertains to sending and receiving tokens and other internal network considerations (Col. 1, lines 64-67 and col. 2, lines 1-3). Again, Chambers et al. does not teach the node's functions outside of the network. Accordingly, Chambers et al. does not teach all the elements of Claims 17 and 39, which are therefore patentable over Chambers et al.

In rejecting Claim 1 under 35 U.S.C. § 102(e) based on Hirst et al., the Office Action alleges that Hirst et al. teaches a "device for digital input and output data management (link manager)." However, this "link manager" is not a "device for digital input and output data management." In fact, the "link manager" is a device analogous to a "third-party arbitrator"

---

[1] See MPEP 2163.06 stating that "information contained in any one of the specification, claims or drawings of the application as filed may be added to any other part of the application without introducing new matter."

characteristic of the prior art whose deficiencies are corrected by the claimed invention. This is clearly illustrated in Figs 1 and 2 of Hirst et al., which illustrate prior art for Hirst et al., each including third party arbitrators (11, 13, 30, 15, 29, and 31 in Fig. 1 and 11, 13, 14, 29, and 31 in Fig. 2), and Fig. 3 of Hirst et al., which illustrates the improvement of Hirst et al. Clearly, Hirst et al. again uses a third party arbitrator (the "link manager"), albeit a more complex, and perhaps better, one. The use of this arbitrator, called "link manager" or "third node" in Hirst et al., therefore makes Hirst et al. an embodiment of the deficient prior art cited in the Applicants' specification (see, e.g., page 2, line 32, and page 3, lines 1-7). Accordingly, Hirst et al. does not teach all the elements of Claims 17 and 39 since it is the link manager and not the switches themselves that control the switches. Claims 17 and 39 are therefore patentable over Hirst et al.

In rejecting Claim 1 under 35 U.S.C. § 102(e) based on McDowell, the Office Action alleges "said means (computers) mutually exchanging polling messages (confirmation logic) via these two interfaces." Applicants respectfully disagree. In McDowell, the confirmation logic is exclusively tied to the file mirrors 155/255 and confirmation detection 157/257 (see, e.g., Fig. 3 and col. 4, lines 41-51). The router or switch 6 allows connectivity to additional computers, but does not amount to a second path used to detect a failure as in Claim 17 which recites two interfaces, the "network" and the "standby bus." Moreover, the system in McDowell uses shared memory 12 (see Fig. 1). The use of shared memory external to the primary and secondary computers constitutes an "arbitrator" characteristic of the prior art mentioned in the application. Accordingly, McDowell does not teach all the limitations of Claims 17 and 39, which are therefore patentable over McDowell.

In rejecting Claim 1 under 35 U.S.C. § 102(e) based on Robbins et al., the Office Action alleges "first management means (primary PE) and second management means (secondary PE) connected to each other via two interfaces, one a network and the other a

standby line (a network and a bus)." Applicants respectfully disagree because the primary PE

has its own distinct bus and so does the secondary PE, as stated in the Robbins et al. (col. 2,

lines 36-41). Moreover, the detection of a failure is accomplished through a "switching

circuitry" which "may be implemented in a controller or a chipset in any convenient location

in the system 100" (col. 5, lines 31-34). Therefore, the "switching circuitry" is the

"arbitrator" of the prior art, as discussed above. Accordingly, Robbins et al. does not teach

all the limitations of Claims 17 and 39 since an arbitrator is responsible for controlling which

PE is in control, not the PE itself, and Claims 17 and 39 are therefore patentable over

Robbins et al.

In response to the rejection of Claim 1 under 35 U.S.C. § 102(e) based on Carlson,

Applicants respectfully submit that the application servers in Carlson do not constitute a

redundant system in which one server is activated and the other is standing by to take over

should the first unit have a failure. In Carlson, both application servers are functioning and

accomplishing tasks distributed to them by a web server 104 or directly from a client

computer 114. This configuration does not include two units, one activated and the other

standing by to take over in case of failure of the first unit. Carlson teaches the redirecting of

unanswered requests (col. 17, lines 42-57). However, an arbitrator, the "requesting thread,"

is responsible for this, not the application server itself, as evidenced in Carlson at col.17, lines

47-52 ("the requesting thread may be operable to attempt to send the request to the same

application server (...) and then attempting to send the request to another application server,

if the application server is part of an application server cluster"). This "arbitrator" aspect is

further evidenced (col. 17, lines 58-62) since it is the client computer that chooses an

application server to which his requests are to be sent. Accordingly, Carlson does not teach

all the limitations of Claims 17 and 39, which are therefore patentable over Carlson.
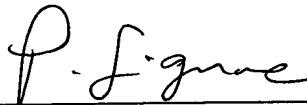
Accordingly, the prior art fails to teach or suggest every feature recited in Applicants' independent Claims 17 and 39 so that Claims 17-42 are patentably distinct over the prior art. Therefore, Applicants respectfully traverse, and request reconsideration of, the rejections based on the <u>Chambers et al.</u>, <u>Hirst et al.</u>, <u>McDowell</u>, <u>Robbins et al.</u>, and <u>Carlson</u> patents.[2]

Consequently, in view of the present amendment, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 17-42 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Philippe J.C. Signore
Attorney of Record
Registration No. 43,922

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)

---

[2] See MPEP 2131: "A claim is anticipated <u>only if each and every</u> element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," (Citations omitted) (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."